

Before the  
COPYRIGHT ROYALTY BOARD  
LIBRARY OF CONGRESS  
Washington, D.C.

In the Matter of:

DETERMINATION OF RATES AND  
TERMS FOR MAKING AND  
DISTRIBUTING PHONORECORDS  
(Phonorecords IV)

Docket No. 21-CRB-0001-PR  
(2023-2027)

**WRITTEN DIRECT STATEMENT  
OF COPYRIGHT OWNERS**

**VOLUME VI.C**

**PUBLIC VERSION**

**COEX-6.1**

Before the  
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In the Matter of:

DETERMINATION OF RATES AND  
TERMS FOR MAKING AND  
DISTRIBUTING PHONORECORDS  
(PHONORECORDS III)

Docket No. 16–CRB–0003–PR  
(2018–2022)

**WITNESS STATEMENT OF ANNETTE YOCUM**

1. My name is Annette Yocum and I am the Vice President of Finance of Warner/Chappell Music, Inc. (“Warner/Chappell”).

2. Music publishers play a critical role in helping to discover and develop writers and composers across all music genres. As I will explain below, music publishers assume the financial risk that many of the writers and composers they sign will never achieve any significant commercial success. Yet, without the financial support and investment by music publishers in new and existing writers and composers, the creation of new music would be reduced. Consequently, if diminishing income from existing catalogues prevents or reduces the ability of music publishers to continue to invest in new songwriters, I believe the creation of music in the future will also be diminished.

3. As also set forth below, in addition to discovering and developing new talents, music publishers: (a) provide financial support to writers and composers by paying advances against royalties that a writer hopes to earn in the future; (b) market, license and promote the songs on a worldwide basis, including through subpublishing or administration agreements; (c) track the exploitation of the songs; (d) collect and process all of the income received from

thousands of users and issue royalty statements to the writers and composers; and (e) protect the copyrights against unauthorized use, both through their in-house counsel and through outside litigation counsel.

4. Accordingly, I make this statement to document, from a financial perspective, the investment that Warner/Chappell makes in discovering, developing and then supporting the creative efforts of both new and existing writers and composers, including describing the financial investment that Warner/Chappell makes in marketing, promoting and licensing songs in the United States and throughout the world. I will also describe the financial investment Warner/Chappell makes in tracking the exploitation of the songs, collecting and processing the income derived from use of those songs, and accounting to the writers and paying their share of the income generated by their songs. I will also discuss the financial investment that Warner/Chappell makes to protect the copyrights against unauthorized use.

5. Finally, I will discuss the financial impact that interactive streaming and limited download services have had on mechanical revenues, and I will explain why I believe that the mechanical royalty rates paid by digital services need to be increased if the critical role performed by music publishers in facilitating and enabling the continual creation of new music is to be supported and not disrupted so that the public can be assured that the body of music of the future will be as rich as in the past.

### **Professional Background**

6. I have a bachelor's degree in finance from Western Michigan University and a master's degree from Walsh College. I am also a certified public accountant.

7. As Vice President of Finance for Warner/Chappell, I am responsible for several areas of the financial affairs of the company, including budgeting and forecasting, financial



analysis, accounting, financial reporting and reviewing deals with the company's songwriters. I report to the Chief Financial Officer of Warner/Chappell, Paul Kahn.

**Warner/Chappell Music**

8. Warner/Chappell is one of the largest music publishing companies in the world. It controls many of the most successful and recognizable songs and music catalogues. For example, Warner/Chappell's catalogue includes songs written by iconic writers such as Led Zeppelin, Cole Porter, John Williams and James Brown. Warner/Chappell also administers and/or co-publishes songs written by contemporary artists such as Katy Perry, Kendrick Lamar, Twenty One Pilots and Vance Joy. It owns and/or administers approximately [REDACTED] compositions written by thousands of songwriters.

**Music Publishers' Contribution To Creation and Exploitation of Music**

9. Music publishers like Warner/Chappell employ [REDACTED] people who are responsible for all of the activities that allow the public to have access to existing songs and to experience a constant stream of new songs by both established writers and new writers.

***Finding and Developing Songwriting Talent***

10. One of the most significant contributions of music publishers like Warner/Chappell to the music industry is the investment they make in discovering and developing new songwriting talent. There is always a demand for new music. Music publishers like Warner/Chappell employ people who are tasked with finding and developing the next great songwriter.

11. The artist and repertoire ("A&R") department is one of the departments which performs these activities. The A&R department is dedicated to searching for and discovering

new and unknown songwriters, and then helping to develop their talents. The A&R department may also identify recording artists to record the writer's songs.

12. Warner/Chappell's A&R Department employees are responsible for discovering and developing new songwriting talent. Warner/Chappell employs some [REDACTED] A&R professionals in the United States alone and [REDACTED] A&R professionals worldwide, who are dedicated to discovering and developing fresh and diverse songwriting talent.

13. The activities of our A&R Department, which are crucial to Warner/Chappell's development of songwriters and to making more music available to the public, entail a significant cost to Warner/Chappell and [REDACTED], which are discussed in detail below.

14. Once the A&R Department has discovered a new writer, Warner/Chappell undertakes to "sign" the writer by entering into a contract with the writer. Such contracts allow Warner/Chappell to publish or administer the songs to be written in the future by a new or established writer. These and other contracts may also allow Warner/Chappell to publish or administer existing songs or catalogues. Almost invariably, in order to sign either a new or existing writer, Warner/Chappell is required to pay an advance against the hoped-for future royalty earnings that may be earned by the songwriter's songs.

15. Warner/Chappell's Finance Department, among other things, financially models deals for the acquisition of rights from both new and existing writers, and in connection therewith, makes financial determinations regarding advances to be paid to those writers. It also values the rights in catalogues and extended renewal term rights that it wishes to acquire. Extended renewal term rights are rights arising under the United States Copyright Act pursuant to which writers and their heirs can terminate grants they have made and then renegotiate new

deals to sell or administer the reclaimed rights to the same publisher or, after a certain period of time, to someone else.

16. In determining the amount of such an advance, Warner/Chappell's Finance Department [REDACTED]

[REDACTED]  
[REDACTED]  
[REDACTED].

17. The financial modeling for computing new and existing writer advances, and purchasing extended renewal term rights or existing catalogues, requires a great deal of experience and judgment. [REDACTED]

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

18. Financial modeling and deal evaluations present meaningful challenges and entail financial risk. [REDACTED]

[REDACTED]  
[REDACTED]  
[REDACTED]

Thus, a determination as to what amount of an advance should be paid is not an exact science. It

is more a function of experience and market competition. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

19. Specifically, in recent years, [REDACTED]

[REDACTED]

[REDACTED]. Thus, Warner/Chappell's determination and payment of advances to both new and existing writers entail growing financial risks that we must assume if we are to remain in the business of protecting the future of our business and the future of the music industry by finding the writers of tomorrow's standards.

20. But to compete for talented writers and to enable writers to work, we must continue to make advances, despite the growing risks and uncertainties. Indeed, advances are an essential part of developing the talents of new and established songwriters. As explained by the writers who have submitted witness statements in this proceeding, advances enable writers to write by financing their day-to-day expenses, including professional bills, management commissions, equipment costs, transportation, taxes and general living expenses.

21. Determining an appropriate advance is necessary but the risk that the advance will not be fully recouped is ever-present. Warner/Chappell pays advances to promising talent or established writers with the hope that the advance will eventually be recouped from the income generated by the writer's successful songs. However, it is unavoidable that many of the advances we pay are never recouped and must be written off. [REDACTED]

[REDACTED], there is a

significant risk that the advances paid will not be recouped within a reasonable time period, if ever, and for Warner/Chappell to be successful, the new writers that do succeed (and the already successful and proven writers) essentially have to be sufficiently successful to compensate for the ones that do not succeed.

22. Nonetheless, as mentioned, payment of advances is crucial to the signing and development of Warner/Chappell's songwriters, and accordingly, Warner/Chappell must assume the risks associated with such advances. These advances constitute a substantial yearly expenditure by Warner/Chappell. For example, in 2014, in the United States alone,

[REDACTED]

However, since that time, while the advances paid have been fairly steady, the rate of recoupment has dropped significantly. For example, in 2015 [REDACTED]

[REDACTED]. In 2016 [REDACTED]

[REDACTED] The foregoing is demonstrated on the spreadsheets, including U.S. Comparative Cash Flow Analysis, produced in this proceeding and attached as **CO Ex. 8.1**.

23. Over the past five years, Warner/Chappell has spent, on average, [REDACTED] of its yearly revenue on payment of advances to new and existing songwriters each year. [REDACTED]

[REDACTED]



**\_\_\_\_\_** If the number

24. In addition to the advances paid, there is significant cost in reaching deals with new and existing songwriters, as well as licensing the songs in Warner/Chappell's catalogue to generate income from the songwriters' works.

25. Warner/Chappell's Legal and Business Affairs Department performs a broad array of critical services, including negotiating and drafting contracts with new writers, renewing or extending agreements with existing writers, acquiring catalogues of songs, securing extended renewal term agreements under the United States Copyright Act with writers and their heirs, negotiating agreements with prospective licensees for the exploitation of songs and protecting the rights in the songs along with outside litigation counsel.

26. Warner/Chappell employs █ people in its Business and Legal Affairs Department (which includes a department focused on digital licensing deals) in the United States and has more than █ Business and Legal Affairs employees worldwide, most of whom are lawyers experienced in the music industry. Not only do they negotiate and draft songwriter agreements with both new and established writers, but they also supervise outside counsel in litigations to protect the songs in Warner/Chappell's catalogue and negotiate and draft the more complicated license agreements (including those for live theatrical productions such as "Hamilton").

27. The Business and Legal Affairs Department also supervises the negotiation and preparation of agreements to acquire existing song catalogues from songwriters and other publishers and to purchase extended renewal term rights. Understanding and being able to

address extended renewal term rights is especially important when dealing with older catalogues, where the grants of rights made decades ago are entering into the period where the extended renewal term rights are coming due.

28. Warner/Chappell incurs significant expense to maintain control and supervision over a large body of proven songs. The maintenance of these existing catalogues and the income they generate is directly linked to Warner/Chappell's ability to discover and sign new songwriting talent, because the generated income provides the financial wherewithal necessary to enable Warner/Chappell to make the risky investments in unproven writers. In effect, the income being generated by existing songs helps fund the development of new writers and, thus, new songs.

29. The costs associated with all of these activities fall within the overheads costs of these departments, making up a large portion of Warner/Chappell's overhead. In fiscal year 2015 (Oct – Sep) and fiscal year 2016 (Oct – Sep), the overhead expenses for the A&R Departments across the United States totaled [REDACTED], respectively. The Business and Legal Affairs Department (including the digital department mentioned earlier) incurred overhead expenses of [REDACTED] in fiscal year 2015 and [REDACTED] in fiscal year-to-date 2016. The overhead costs and other expenses for each department are set forth on **CO Ex. 8.2**, a version of which was previously produced in this proceeding, but which has been updated with additional figures now available for fiscal year 2016.

***Building and Maintaining The Value of Songs Through Licensing***

30. Because the revenues from existing catalogues allow music publishers such as Warner/Chappell to support the creation of the new songs, we also invest in the acquisition of



existing songs written by established writers and the acquisition of the United States extended copyright renewal terms of existing musical compositions.

31. For proven songs with a long history of consistently generating income (which are often referred to as “evergreen” songs), the cost of acquiring extended renewal term rights can be incredibly expensive, involving purchase prices in the range of [REDACTED] historical income. By way of example, this year, Warner/Chappell acquired the extended renewal term rights (and future songwriter royalties) of the songs written by [REDACTED] [REDACTED].

32. While there is no assurance that the acquired songs will continue to generate the same level of income as in the past, and thus, no assurance Warner/Chappell will be able to recoup the purchase price in any reasonable period of time, the investment in the acquisition of these songs and catalogues is necessary to support the search for and development of new songwriters.

33. Thus, in 2015, Warner/Chappell spent [REDACTED] to acquire or administer the extended renewal term rights of existing catalogues and songs. That number rose to [REDACTED] in 2016, and is expected to grow in 2017. The 2015 and 2016 expenditures for acquisition of such extended renewal term rights are set forth on the schedule attached as **CO Ex. 8.3**.

34. Warner/Chappell assumes the substantial risk in making acquisitions of existing compositions or catalogues. And changes in the music industry such as [REDACTED]  
[REDACTED]  
[REDACTED] has made forecasting future revenues that will be earned from the exploitation of even classic and widely popular songs increasingly difficult.

35. Thus, determining how much should be offered to acquire either or both songwriter royalties or extended renewal term rights (or even current rights in an existing catalogue of songs) carries far greater risk than in the past. Yet there is little choice, if the music industry is to continue to identify and develop the new songs of the future, for music publishers to continue to invest not only in finding, signing and developing new writers but in retaining and acquiring the rights to successful existing songs to support the investment in the future of music.

36. In addition to the activities discussed above, Warner/Chappell also has an Administration Division, which includes the following departments: Royalties, Copyright, Mechanical Licensing, Tracking and Audit & Client Services.

37. Once a songwriter has been signed, Warner/Chappell is responsible for administering the rights in his or her musical compositions including licensing mechanical rights, synchronization rights, performance rights and print rights. The licensing activities of Warner/Chappell comprise a large portion of the day-to-day activities of Warner/Chappell's Business and Legal Affairs, Mechanical Licensing and Synch Departments. Warner/Chappell has large departments dedicated to licensing songs in its catalogues for a variety of uses in order generate income from the songs. Music publishers issue, directly or through agents, mechanical licenses, which authorize the exploitation of songs on phonorecords, digital downloads and streaming services like the digital services involved in this proceeding. In addition, Warner/Chappell has employees devoted to seeking to secure synchronization licenses for the use of songs in films, television programs, commercial advertisements and other audiovisual media. Music publishers also secure licensing of songs for use in live theatrical presentations.

38. In the United States, Warner/Chappell licenses mechanical rights to users both directly and through The Harry Fox Agency in the United States and through foreign societies such as MCPS in the United Kingdom and GEMA in Germany.

39. Warner/Chappell licenses public performance rights in the United States through the performance rights organizations – ASCAP, BMI or SESAC – as well as directly. Indeed, over the past four years, music publishers like Warner/Chappell have spent [REDACTED] [REDACTED] responding to discovery requests in a United States Department of Justice inquiry into what are known as the ASCAP and BMI “Consent Decrees,” and in addressing the Department of Justice in industry-wide meetings in an effort to protect and enhance the value of the copyrights such publishers control, and the future income to be generated from such copyrights for songwriters and publishers. Individual writers, with very few exceptions, could not afford to participate in these proceedings (in which the digital services have been very active participants) and, but for the efforts of the publishers (and BMI and ASCAP), the writers would be left unrepresented and their rights unprotected.

40. Warner/Chappell also endeavors to exploit the works of their writers through, among other things, the exploitation and issuance of synchronization licenses for use of songs in television, films, commercials and other audiovisual media. Warner/Chappell does so through its Synch Department. Warner/Chappell’s Synch Department combined with Warner Music Group’s Master Synch Department in 2014 (in the United States only) and employs approximately [REDACTED] people in the United States and approximately [REDACTED] people worldwide. In 2015 and 2016, the U.S. Synch Department’s overhead expenses for publishing only were approximately [REDACTED] and [REDACTED], respectively. (CO Ex. 8.2.)



41. The overhead costs associated with the Synch Department are a necessary investment to maximize the exposure of our songwriters' works and to help generate income from the songs. However, despite all of Warner/Chappell's best efforts, most songwriters' songs will not be successfully exploited in film or television.

42. I believe that individual songwriters, even successful ones, would not be able to perform these services for themselves. Indeed, the time and effort dedicated to exposing the songs of our new writers to the film, television and advertising communities would not be possible but for the fact that [REDACTED]

***Songwriters' Works and Right to Revenue***

43. In addition to its licensing activities, Warner/Chappell's Copyright Department is devoted to the administration of the copyrights, including making sure that the copyrights are protected and registered with the United States Copyright Office, registered with one of the performing rights societies (most commonly, ASCAP or BMI in the United States) and licensed to both affiliated or unaffiliated foreign subpublishers for exploitation abroad.

44. The Copyright Department performs critical research with respect to historical catalogues. Generally, copyrights currently endure for the life of the author plus 70 years.<sup>1</sup> The Copyright Department is responsible for maintaining the records for these songs in order to ensure that they are protected and that they continue to generate income.

45. In the United States, Warner/Chappell employs [REDACTED] employees in its Copyright Department, and [REDACTED] employees within its Administration Division. Warner/Chappell employs [REDACTED] employees in its Administration Division worldwide.

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<sup>1</sup> For older works that were copyrighted under the 1909 Copyright Act, the term of United States copyright protection is now 95 years.

46. Warner/Chappell also makes significant investments in music rights management systems and royalty accounting. The exploitation of songs is a worldwide business and publishers like Warner/Chappell receive royalty statements and payments from [REDACTED] of licensees several times a year. All of this data has to be processed and royalty statements have to be generated, twice yearly or, in some cases, quarterly, to each of the [REDACTED] of writers and co-publishers of the songs owned and administered by Warner/Chappell.

47. In addition to the administration of its catalogue, one of the most important services provided by a music publisher is the processing of royalties that are received from users of songs and the generation of statements and payments to writers.

48. These royalty services are administered by Warner/Chappell's Royalties Department and Audit & Client Services Department. In the United States, Warner/Chappell employs within its Royalties Department some [REDACTED] employees who process royalties, and create and review statements and employs within its Audit & Client Services Department approximately [REDACTED] people who audit and administer songwriter royalties.

49. The overhead expenses associated with the day-to-day administration of copyrights and royalties are significant. In 2015, the overhead for Warner/Chappell's Administration Division, which includes Copyright, Royalties, Tracking, Mechanical Licensing and Audit & Client Services (the work of which I mentioned above), totaled [REDACTED], which decreased to [REDACTED] in 2016 due to implementation of a new royalty and copyright system and severance being paid in 2015. The overhead for this division is expected to remain about the same for 2017. (CO Ex. 8.2.)

50. It is important to note that the processing of royalties is not simply a computerized activity. Statements must be examined and often there are errors in matching songs to royalty

income. In addition, there are statements and payments that continue to come in paper form [REDACTED]

51. Further, with [REDACTED] of writers and their heirs, Warner/Chappell is often responding to questions raised about royalty statements, both in writing and by telephone. The employees of the Royalty and Audit & Client Services Departments handle these calls and communications. There are also audits regularly conducted on behalf of writers and the employees of the Royalty and Audit & Client Services Departments address the audit inquiries and provide responses to audit reports and participate in the resolution of any audit disputes.

52. In addition to the foregoing departments, Warner/Chappell also incurs additional costs in connection with the day to day administration of its catalogue, including by its Finance Department, which provides the financial modeling work with respect to new writer deals, the acquisition of catalogues and the purchase of writer royalty streams and extended renewal term rights. The department also manages the overall financial and business affairs of Warner/Chappell. In the United States, the finance department incurred [REDACTED] in overhead costs in 2015, [REDACTED] in overhead costs in 2016 and is expected to incur approximately [REDACTED] in overhead costs in 2017. (CO Ex. 8.2.)

53. Finally, Warner/Chappell's Executive Department is responsible for supervising and managing all of the separate departments, including royalty, copyright, licensing, income tracking, financial planning and administration activities and each of Warner/Chappell's worldwide music publishing affiliates (which are located in most of the major countries in the world). The overhead costs associated with the Executive Department in 2015 was [REDACTED] and decreased to [REDACTED] in 2016. The overhead expenses for the department are expected to rise to [REDACTED] in 2017.

The Increase in Digital Streaming

54. Over the past five years, the sale of physical albums and digital downloads have steadily declined. Whereas Warner/Chappell's U.S.-based mechanical income from the sale of physical recordings and digital downloads in 2014 was some [REDACTED], by 2016 it had declined sharply to [REDACTED]. During that same period, Warner/Chappell's mechanical income from streaming services grew from slightly less than [REDACTED] to slightly less than [REDACTED]. (CO Ex. 8.1.)

55. [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

56. Mechanical income from physical recordings and digital downloads [REDACTED]  
[REDACTED]  
[REDACTED] the mechanical income from streaming services [REDACTED]  
[REDACTED]  
[REDACTED]



[REDACTED]

[REDACTED]

57. As a result, music publishers like Warner/Chappell are facing new difficulties in managing their business and continuing to acquire the services of new writers and existing catalogues and songs. Because the income from existing works supports the ability of music publishers to continue to discover, sign and develop new writers, the erosion of revenue from mechanical income has made it difficult to predict future revenue that may be generated from both as-yet unwritten songs and even from existing songs.

58. In addition, the digital services often profess to have or do have difficulty in matching their streaming data to a particular song. Consequently, we have found that writers and publishers often fail to be paid or are long delayed in receiving even the reduced amount of income that should be forthcoming from these streaming services.

59. These delayed payments create even more problems for both writers and publishers (especially for those writers who are dependent on the declining income they are receiving for the exploitation of their songs) and may be causing a delay in the recoupment of advances paid out by Warner/Chappell to its writers. The delayed payments also further increase the difficulty in forecasting income from both new and existing songs.

60. Importantly, the growing delay in recoupment of advances resulting from both diminishing mechanical income from streaming services and reporting delays not only

[REDACTED]

[REDACTED]

[REDACTED]

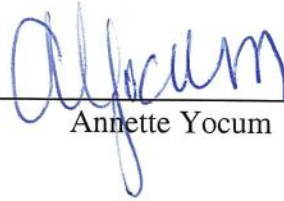
[REDACTED]

61. I believe that some of the delays in payment and accounting would be alleviated by a simpler and more straightforward means of calculating royalties, more akin to how mechanical income has been paid in the physical and digital download world for decades. If the rate were paid on a greater of a per-play and per-user basis, a writer and publisher would only have to know the number of times each song was streamed and the number of users to determine the income payable to the publisher and songwriter.

62. Again, while I defer to others for what that rate should be and how it corresponds to a rate for physical recordings and digital downloads, based on the hard data I have described herein and given the costs that music publishers must incur and the risks that they must run, in my view, it is imperative that the rates paid by the Digital Services for the mechanical reproduction of songs must be increased if we are to be able to continue to find, develop and make available the new songs that will enrich the lives of the public in the future.

I declare under penalty of perjury that the foregoing testimony is true and correct to the best of my knowledge, information and belief.

Dated: October 28, 2016



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Annette Yocum

**COEX-6.2**  
**RESTRICTED**  
**FILED UNDER SEAL**

**COEX-6.3**  
**RESTRICTED**  
**FILED UNDER SEAL**

**COEX-6.4**  
**RESTRICTED**  
**FILED UNDER SEAL**

**COEX-6.5**  
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**COEX-6.6**  
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**COEX-7.1**  
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**FILED UNDER SEAL**

**COEX-7.2**  
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**COEX-7.7**  
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**COEX-7.14**  
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**COEX-7.22**  
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**COEX-7.25**  
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**COEX-7.26**  
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# Proof of Delivery

I hereby certify that on Wednesday, October 20, 2021, I provided a true and correct copy of the Volume VI.C - Copyright Owners' Exhibits to the following:

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Signed: /s/ Benjamin K Semel